

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री धुव्वुरु आर.एल रेड्डी न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER, AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3179/Mds/2016
निर्धारण वर्ष /Assessment Year: 2011-12

The Income Tax Officer, Ward-5,
Virudhunagar.

Vs. M/s.P.R.Venketarama Raja
(HUF), No.642,
Ramamandiram, Tenkasi
Road, Rajapalayam-626 117.
[PAN: AAAHV 5302 A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.Jagadisan, CA

सुनवाई की तारीख/Date of Hearing

: 29.03.2017

घोषणा की तारीख /Date of Pronouncement

: 30.05.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated 29.03.2016 of Commissioner of Income Tax (Appeals)-3, Chennai, in ITA No.0044/2014-15 for the AY 2011-12.

2.0 All the grounds of the appeal are related to the deduction u/s.54 F of Income Tax Act. The assessee filed the return of income declaring total income of Rs.48,288/- and agricultural income of Rs.23,39,762/- on

13.07.2011. the assessment was completed u/s.143(3) on total income of Rs.3,26,41,570/-. In the Assessment Order made u/s.143(3) dated 26.02.2014, the AO disallowed the deduction claimed by the assessee u/s.54F of IT Act.

3.0 During the assessment year, the assessee sold properties for a consideration of Rs.3,26,94,600/- as per the details given below:

Sl. No.	Name of the purchaser	Description of the properties sold	Date of sale	Sale value
1	M/s.P.A.C. ramasamy Raja Centenary Trust	Residential properties at Door Nos.32, 33 & 34, Jawahar Maidan Street, Rajapalayam, Door No.504 & 505, Tenkasi Road, Rajapalayam	23.09.2010	Rs.64,26,000
2	M/s.Rajapalayam Mills Ltd.	Residential properties at Doors Nos.43A & 44, Samsikapuram, Andalpuram, Rajapalayam	23.09.2010	Rs.2,63,68,600
Total				Rs.3,27,94,600

The entire long term capital gains relating to sale consideration on account of sale of properties was claimed as exempt u/s.54F of the Income Tax Act. The AO disallowed the claim of the assessee on two reasons as follows:

(i) The receipt of capital gains on sale of properties mentioned above were residential houses and the deduction u/s.54 F is not permissible on sale of the residential properties.

(ii) The assessee owns more than one residential house as on the date of transfer of the asset and 54F restricts the deduction if the assessee's owns more than one residential house other than new asset.

4.0 Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) called for the Remand Report from

the AO. The AO submitted the Remand report stating that the properties sold were commercial as well as residential units and the assessee is not eligible for deduction u/s.54 F of the Income Tax Act. The Ld. CIT(A) verified the facts of the case and allowed the assessee's appeal and has given the following findings/observations:

12.4. Firstly on a perusal of the records of the case and of the Income Tax and Wealth Tax returns (IT & WT Returns) of the appellant for the AY's 2008-09 till 2010 -11 (Till the date of sale of the said properties), it is seen that in both the IT & WT Returns of the appellant, the properties sold have been mentioned as commercial properties

12.5 The Assessing Officer has not properly verified the IT & WT Returns of the appellant for the previous years. The AC has erroneously presumed that the properties sold by the appellant are residential in nature.

12.6. Secondly, the Assessing Officer has erroneously presumed that the appellant has neither purchased any property nor invested in any new asset. He has presumed that the appellant has purchased the property "In his Individual and not 'In the capacity of his HUF" as the PAN reference given in the sale deed is AAYPV5127H which is the PAN for "Individual status". He therefore presumed that the entity who has sold the properties is the appellant "In the capacity of his HUF" and the entity that has purchased the new property is the appellant "In his Individual capacity".

12.7. The AO has held that as per the purchase deed the appellant has purchased the property "In his Individual capacity" since the name of the appellant appearing in the purchase deed is that of the individual namely P.R. Venketrama Raja bearing the PAN No AAYPV5127H which relates to the appellant 'In his Individual capacity" while the claim under section 54F is related to the appellant 'In the capacity of his HUF".

12.8. Further the AO held that the appellant entered into an agreement for construction of the new residential property with M/s Ramcons in the name of P.R. Venketrama Raja (Individual).

12.9. Since both the entities are different, he has held that the appellant will not be eligible for exemption u/s 54F of the IT Act.

12.10 Thirdly, the AO has given another finding that the appellant has received capital gains from the sale of residential properties, and hence the appellant will not be eligible for exemption u/s 54F of the IT Act

12.11. This finding of the AO is also erroneous, because on a perusal of the IT & WT Returns of the appellant for the previous years .till the date of sale of the properties, it is seen that the properties sold have been mentioned as commercial properties.

12.12. Fourthly the AO has given another finding that since the appellant owns more than one residential house as on the day of transfer of the asset, the appellant will not be eligible for exemption u/s 54F of the IT Act.

12.13. This finding of the AO is also erroneous, because on a perusal of the IT & WT Returns of the appellant for the previous years till the date of sale of the properties, there is no mention of ownership of any residential property in the name of the appellant In the capacity of his HUF. The appellant has confused the ownership of residential property in the name of the appellant "In his individual capacity" with that of the "HUF".

12.14. From the records, it is seen that the funds for the purchase of the new property have come from the hank account of the appellant "In the capacity of his HUF and not from "His individual capacity".

12.15 Even though the purchase deed for the property states the name of the appellant as P.R. Venketrama Raja bearing the PAN No AAYPV5127H which relates to the appellant In his Individual capacity" and the agreement for construction of the new residential property with M/s Ramcons dated 12.12.2008 is also in the name of P.R. Venketrama Raja, the legal position is that the appellant can enter into the purchase and sale of any property of the HUF, in his capacity as the Kartha of the HUF". In fact the Kartha of the HUF can represent the HUF in the sale or purchase of any property of the HUF or enter into any transaction on behalf of the HUF and this is legal as per the provisions of the HUF Act or the IT Act.

5.0 Aggrieved by the order of the Ld.CIT(A), the Revenue is on appeal before us.

Appearing for the Revenue, the Ld. DR argued that the assessee had sold the residential property which is evidenced by the Wealth Tax return, electricity connections and municipal records. The assessee also owns more than one residential property which is also evident from the Wealth Tax assessment records and electricity connections. The Ld. DR further argued that deduction u/s.54 F of Income Tax Act is allowed subject to the following conditions:

- (i) The capital gains should be for sale the asset other than the residential house.*
- (ii) The assessee should not own more than one residential house other than new house as on the date of transfer of the asset.*

The Ld. DR further submitted that in the instant case property sold by the assessee was residential house and the assessee owns the residential house as on the date of transfer of the asset, hence the assessee has not satisfied the conditions laid down in section 54F for granting relief u/s 54F.

Further, the Ld. DR also submitted that the new property was purchased in the name of the assessee by quoting individual PAN and the properties sold were related HUF. Since the properties were not acquired in the name of HUF, the owner of the properties who transferred the capital assets, the deduction is not allowable u/s.54 F of Income Tax Act. On the other hand, the Ld.AR argued that as per the existing laws HUF cannot enter into contract with another person and the properties cannot be registered in the name of the HUF and the property is always purchased by the HUF represented by Karta of HUF. The assessee has got registered the properties quoting the individual PAN, since the registration authorities do not register the property without photo identity of PAN. The sale proceeds were credited in to HUF account and from the funds of the HUF account, the properties were acquired and accounted in the HUF accounts. Therefore, the Ld. A.R argued that department's contention that the property was acquired in the third party's name is incorrect and the property was acquired by the HUF and the same was accounted in HUF account. The Ld.AR further argued that the properties in question sold

were not residential properties but commercial properties. The three properties mentioned by the AO were used for the purpose of hospital and the godown and hence, the A.R contended that the properties in question should not be treated as residential properties. Mere payment of electricity charges or usage of electricity charges as residential units cannot be conclusive evidence to prove the commercial properties or residential properties. The Ld.A.R further submitted that the properties held in the name of the assessee on the date of sale were commercial buildings but not the residential properties. Therefore, the Ld.AR contended that the assessee has satisfied all the conditions for granting relief under section 54F of IT act and the Ld.CIT(A) has rightly allowed the deduction u/s.54 F of Income Tax Act and no interference is called for. The Ld.AR further argued that the assessee has made an alternate claim for deduction u/s.54 of Income Tax before the Ld.CIT(A) in the event of being held not eligible for deduction u/s.54F and and the same was allowed by the Ld.CIT(A). Responding to the alternate claim made by the assessee for deduction u/s54 the Ld.DR argued that the alternate claim is not permissible in the absence of any such claim made in the return of income. The Ld.AR argued that there is no error in the Ld.CIT(A) order and no interference is called for.

6.0 We heard the rival submissions and perused the material placed before us.

The first objection of Revenue is purchase of new property in the name of Shri P.R. Venkata Ramaraja, individual quoting the own PAN

number for claiming the deduction u/s 54F. The assessee has sold the properties (long term capital assets) of HUF and invested in acquiring new property and claimed the deduction. The new property was registered in the name Shri P.R. Venkata Ramaraja, Karta of HUF quoting individual PAN but not HUF PAN number. During the appeal, it was argued by the Ld.AR that the properties cannot be acquired in the name of HUF and always acquired by the karta of HUF in his representative capacity. In the registration documents, the assessee has quoted his PAN number since it contains the photograph. It was further submitted by the A.R that registration authorities does not accept the PAN without the photograph. The funds were belonging to the corpse of HUF and the property was thrown into the common hotchpotch of HUF and accounted in the HUF accounts. The Ld.DR or the AO did not bring any evidence to prove that the property was not acquired by the HUF. Now, it is well settled issue that HUF cannot enter into contract or agreement with another person. The Ld.CIT(A) while allowing the appeal of the assessee relied on the following decisions:

- CIT vs. Kalu Babu Lal reported in 37 ITR 123 (SC)
- CIT vs. Dhanwatey reported in 68 ITR 365 (SC)
- CIT vs. Mathura Prasad reported in 60 ITR 428 (SC)
- CIT vs. PN Krishna Iyer reported in 73 ITR 539 (SC)

6.1 The assessee has purchased the properties from the funds of the HUF, purchased in the capacity of HUF as Karta and thrown the property into the common stock of HUF properties. The Karta of HUF has quoted his individual PAN number in the registration document since the

registration authorities insist the PAN card with photograph. The AO has not brought on record any evidence to prove that the property was not acquired by the HUF and not for the benefit of the HUF. The ratio of the Hon'ble Supreme Court in [1959] 37 ITR 123 (SC), Commissioner of Income-tax.v.Kalu Babu Lal Chand is that -

"It is now well settled that an HUF cannot as such enter into a contract of partnership with another person or persons. The karta of the HUF, however, may and frequently does enter into partnership with outsiders on behalf and for the benefit of his joint family. But when he does so, the other members of the family do not, vis-à-vis the outsiders, become partners in the firm. They cannot interfere in the management of the firm or claim any account of the partnership business or exercise any of the rights of a partner. So far as the outsiders are concerned, it is the karta who alone is, and is in law recognised as, the partner. Whether in entering into a partnership with outsiders, the karta acted in his individual capacity and for his own benefit or he did so as representing his joint family and for its benefit is a question of fact. If for the purpose of contribution of this share of the capital in the firm the karta brought in monies out of the till of the HUF, then he must be regarded as having entered into the partnership for the benefit of the HUF and as between him and the other members of his family he would be accountable for all profits received by him as his share out of the partnership profits and such profits would be assessable as income in the hands of the HUF."

6.2 Similarly in the case of CIT vs. Dhanwatey reported in 68 ITR 365 (SC), Hon'ble Apex court held that the the general doctrine of Hindu law is that property acquired by a karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of self-acquired property that it should have been acquired without assistance or aid of the joint family property. The test of self-acquisition by the karta or coparcener is that it should be without detriment to the ancestral estate. Therefore, before an acquisition could be claimed to be a separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property.

6.3 In the instant case the property sold was HUF property, though the assessee registered the new asset in the name of individual, quoting his own PAN number, he happens to be karta of HUF and the property was thrown into the common hotchpotch of HUF. Therefore the Revenue's objection for registering the property in individual's name for denying the deduction under section 54F is baseless and accordingly rejected and the revenue's ground in this issue in ground NO.4 is dismissed.

7.0 Ground Nos.2 & 3 are related to the deduction u/s.54 F of the Income Tax Act:

The assessee has sold the long term capital asset and claimed the deduction u/s.54 F. During the first appeal proceedings, the assessee also made alternate claim for deduction u/s.54. The Ld.CIT(A) allowed the claim of the assessee u/s.54 F as well as 54 which is being agitated by the Revenue. The assessee has sold the long term asset as per the schedule given above. The assessee claimed that the properties were non-residential and long term capital assets. Further, the assessee also owns other residential assets. The assessee's claim was the properties sold were commercial properties and the properties in possession after the transfer of long term capital assets were also commercial properties, hence entitled for deduction u/s.54F. The assessee has filed copies of Wealth Tax returns for the AYs 2008-09 & 2009-10. In the returns, the assessee has admitted that Dr.No.32, 33, 34 Jawahar Maidan Street, Sold for a consideration of Rs.64,26,000/- as residential property. Similarly, the assessee has shown residential property in Wealth Tax returns bearing

No.s 494, 495 and 505, Tenkasi Road, which was owned by the assessee. From the Wealth Tax returns, which was filed by the assessee, it is an irrefutable fact that the assessee owns three residential units with Dr.No.494, 495 and 505. As per the provisions of Sec.54F of the income tax that , if the assessee owns more than one residential house at the time of acquiring a new asset or at the time of sale of the property, the assessee is not entitled for deduction u/s.54F. For ready reference, we extract the relevant part of Sec.54 F of Income Tax Act as under:

[Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

⁸³ 54F. (1) ⁸⁴ [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a ⁸⁵ residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or ⁸⁶ [two years] after the date on which the transfer took place ⁸⁵ purchased, or has within a period of three years after that date ⁸⁷ [constructed, one residential house in India] (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

[Provided that nothing contained in this sub-section shall apply where—

- (a) the assessee,—
 - (i) owns ⁸⁹ more than one residential house, other than the new asset, on the date of transfer of the original asset; or
 - (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
 - (iii) ⁹⁰ constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
- (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]

From the plain reading of Sec.54F, it is apparently clear that the deduction u/s.54 F is available only in case of the assessee who sold the long term capital assets does not own more than one residential asset on

the date of transfer, the income of which is chargeable to tax under the head income from property. In the instant case, the assessee sold residential properties at Dr.No.32, 33 & 34 which is evidenced from the Wealth Tax returns and also owns more than one residential house on which the income is chargeable under the head income from house property as per Page No.26 of the Paper Book. Therefore, we hold that the assessee is not entitled for deduction u/s.54 F and the order of the Ld.CIT(A) is set-aside on this issue. The revenue's appeal on this ground is allowed.

8.0 The assessee made alternate claim during the appeal proceedings before the Ld.CIT(A).

As decided by the Hon'ble Supreme Court in 187 ITR 687, the appellate authorities are permitted to allow the fresh claim during the appeal proceedings on the merits of the case. The Ld.CIT(A) entertained the fresh claim of the assessee and allowed the appeal. In the instant case, the assessee has sold the long term capital assets consisting of residential house and non-residential house. As per Sec.54, the capital gain arising from transfer of long term capital assets being buildings, lands or apartments are used within a period of one year before the transfer of the capital asset or within the period of three years after the date of transfer constructed one residential house in India then the assessee is entitled for deduction u/s.54 of Income Tax Act. For ready reference, we reproduce the Sec.54 of Income Tax Act which reads as under:

Profit on sale of property used for residence.

54. ⁶⁸ ⁶⁹ [(1)] ⁷⁰ ⁷¹ [Subject to the provisions of sub-section (2), where, in the case of an assessee ⁷² being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset ⁷³ [***], being buildings or ⁷⁴ lands appurtenant thereto, and being a residential house ⁷⁴, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of ⁷⁵ [one year before or two years after the date on which the transfer took place purchased ⁷⁶], or has within a period of three years after that date ⁷⁷ [constructed, one residential house in India], ⁷⁶ then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the capital gain ⁷⁸ [is greater than the cost of ⁷⁹ [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

In this case, there is no dispute regarding acquiring of the house within a stipulated period by the Act. The contention of the assessee was that the assessee has utilized the sale proceeds for construction of the house and it was constructed within a period of three years from the date of sale of the asset and entitled for deduction u/s.54. In the instant case, the Ld.CIT(A) entertained the fresh claim of deduction u/s.54 also. As per the Hon'ble Supreme Court judgment in the case of 387 ITR 688 the appellate authorities are duty bound to accept the fresh claims made during the appeal proceedings. The contention of the Ld. DR that the assessee has not claimed before the AO does not hold any merit in the light of the decision of the Hon'ble Supreme Court. The assessee has sold the properties consisting of the residential and non-residential buildings and argued that he is entitled for deduction u/s.54. However the AO has

not examined the claim of the assessee with regard to satisfaction of the conditions laid down in section 54 for allowing the deduction. The Ld. CIT(A) also did not give any finding on satisfaction of the conditions to allow deduction u/s 54. Therefore, we are of the considered opinion that this issue should go back to the file of the AO to verify whether the assessee has satisfied the conditions laid down u/s.54 for claiming deduction u/s 54 or not. Accordingly, we set-aside the orders of the Ld. CIT(A) and the A.O. and remit the back to the file of AO to decide the issue afresh on merits. The appeal of the revenue is allowed for statistical purposes.

9.0 Ground Nos.1 & 5 are general in nature, which do not require specific adjudication.

In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court on 30th May, 2017, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 30th May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 4. आयकर आयुक्त/CIT |
| 2. प्रत्यर्थी/Respondent | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF |